

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

FREDDIE FOUNTAIN, #1640115,

Plaintiff,

V.

JOHN A. RUPERT, et al.,

Defendants.

Case No. 6:15-cv-100-JDK-KNM

ORDER ADOPTING REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

Plaintiff Freddie Fountain, an inmate with the Texas Department of Criminal Justice proceeding pro se and *in forma pauperis*, brings this civil rights lawsuit under 42 U.S.C. § 1983. The case was referred to United States Magistrate Judge K. Nicole Mitchell pursuant to 28 U.S.C. § 636. On October 7, 2020, the Court reopened this case following the Fifth Circuit’s adjudication of his appeal—which affirmed the dismissal of some claims, and remanded others.

Before the Court is Defendants’ motion to revoke Plaintiff’s *in forma pauperis* status. Docket No. 195. On January 19, 2021, Judge Mitchell issued a Report and Recommendation recommending that the Court deny Defendants’ motion. Docket No. 200. Judge Mitchell found that Plaintiff had not accumulated three strikes under the Prison Litigation Reform Act prior to filing this particular lawsuit—and cited several legal and factual inaccuracies in Defendants’ motion.


On January 11, 2021, Defendants filed a document titled “Defendants’ Objections to the Report and Recommendation of the United States Magistrate Judge.” Docket No. 206. In that filing, however, Defendants state: “The Defendants do not object to the Magistrate’s Report & Recommendation to deny the Defendants’ Motion to Revoke the Plaintiff’s *in forma pauperis* status.” *Id.* at 1. Counsel for the Defendants also recognized the mistakes that the Report identified, explained that the mistakes were inadvertent and unintentional, and apologized for the confusion. *Id.* The Court appreciates counsel’s candor.

This Court reviews the findings and conclusions of the Magistrate Judge de novo only if a party objects within fourteen days of service of the Report and Recommendation. 28 U.S.C. § 636(b)(1). In conducting a de novo review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass’n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days). Here, Defendants did not object. The Court therefore reviews the Magistrate Judge’s findings for clear error or abuse of discretion and reviews the legal conclusions to determine whether they are contrary to law. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989), *cert. denied*, 492 U.S. 918 (1989) (holding that, if no objections to a Magistrate Judge’s Report are filed, the standard of review is “clearly erroneous, abuse of discretion and contrary to law”).

Having reviewed the Magistrate Judge’s Report and the record in this case, the Court finds no clear error or abuse of discretion and no conclusions contrary to

law. Accordingly, the Court hereby **ADOPTS** the Report and Recommendation of the United States Magistrate Judge (Docket No. 200) as the findings of this Court. Defendants' motion to revoke Plaintiff's *in forma pauperis* status (Docket No. 195) is **DENIED**.

So **ORDERED** and **SIGNED** this **1st** day of **April, 2021**.



JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE